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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALLEGHENY CASUALTY  
COMPANY,

Defendant and Appellant.

B280715

(Los Angeles County  
Super. Ct. No. SJ004366)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dorothy C. Kim, Judge. Affirmed.

Law Office of John Rorabaugh, John Mark Rorabaugh and Crystal L. Rorabaugh for Defendant and Appellant.

Mary C. Wickham, County Counsel, Ruben Baeza, Jr., Assistant County Counsel, and David D. Lee, Deputy County Counsel, for Plaintiff and Respondent.

Allegheny Casualty Company (Allegheny), as surety, posted a bail bond in the amount of \$140,000 for Sergey Vagramian. Vagramian failed to appear; the trial court ordered bail forfeited and entered summary judgment against Allegheny. Allegheny appeals. We affirm.

## **BACKGROUND**

On August 22, 2014, Nelly's Bail Bonds, as Allegheny's agent, posted \$140,000 bail for Vagramian. On October 23, Vagramian failed to appear in court without excuse. The court ordered bail forfeited and issued a bench warrant for Vagramian. The court sent notice of forfeiture to Allegheny and Nelly's Bail Bonds on November 19.

However, the court clerk erroneously noted on the minute order that bail was exonerated. On March 18, 2015, Nairy Stepanyan, a licensed bail agent for Nelly's Bail Bonds, checked the online bail status system for the status of Vagramian's bail bond. The system showed bail was exonerated. Stepanyan called the bond clerk at the court, who verified that bail was exonerated. The following day, Stepanyan obtained a copy of the docket, which showed that the bail bond was exonerated. On March 20, Stepanyan traveled to the courthouse and spoke to the court clerk, who confirmed that the bail bond was exonerated; she gave Stepanyan a certificate of discharge. Stepanyan then entered the bond as exonerated in Nelly's Bail Bonds' bond forfeiture system and forwarded a copy of the certificate of discharge to Allegheny.

On May 27, 2015, the court recalled and reissued the bench warrant. On June 3, the court sent a demand on bond to Nelly's

Bail Bonds and Allegheny. The demand stated that 180 days had elapsed since bail was ordered forfeited and a notice of forfeiture was mailed. If payment on the bond was not made within 30 days, summary judgment would be entered.

When Nelly's Bail Bonds received the demand on bond, Stepanyan called the bond clerk at the courthouse. The clerk explained that the exoneration was an error which had now been corrected. On June 9, 2015, the court clerk added a note to the docket, explaining: "The original warrant was recalled on 5/27/15, due to a clerical error in the minute order for 10/23/14. The court ordered the bond forfeited; I accidentally exonerated the bond. To correct the minute order the warrant needed to be recalled and re-issued."

On August 20, 2015, the court entered summary judgment on the forfeited bond. The clerk mailed notice of entry of judgment to Nelly's Bail Bonds and Allegheny.

Allegheny then filed a motion to set aside the summary judgment, discharge the forfeiture, and exonerate the bond on September 11, 2015. Allegheny sought relief under Code of Civil Procedure section 473 and principles of equitable estoppel. At a hearing on December 18, the court<sup>1</sup> accepted a stipulation by the parties that Allegheny would have an additional 64 days—until February 22, 2016—in which to surrender Vagramian. The court added: "Should [Allegheny] have further arguments to make which would include the same arguments it's making now, the court would allow [Allegheny] to provide further papers and arguments."

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<sup>1</sup> Judge Kerry Bensinger.

On February 22, 2016, Allegheny filed a motion to extend the time on the bond pursuant to Penal Code section 1305.4. The motion was supported by a declaration from licensed bail agent Brian Ramos, a fugitive recovery agent, documenting his attempts to locate Vagramian. Ramos and his partner had checked various databases. They had spoken with law enforcement agencies, who said they would look into the matter. Ramos had spoken to neighbors of Vagramian's mother; most had not seen Vagramian in months, although one thought she had seen him in the neighborhood a few weeks earlier. On March 18, the court extended time to August 22, 2016.

On August 22, 2016, Allegheny filed a motion to vacate the forfeiture and exonerate bail on the grounds the trial court failed to comply with Penal Code sections 1305 and 1305.4, and it lost jurisdiction over the bond.<sup>2</sup> The People opposed the motion on the grounds there was no statutory violation, Allegheny was not prejudiced by the clerical error, and the error was remedied by the court's extension of time on the bond.

At the January 20, 2017 hearing on the motion, the parties disputed what actually had occurred at the December 18, 2015 hearing. Allegheny's counsel argued: "We stipulated to set aside the judgment, yes; but then we would re-bring the motion . . . to deal with whether or not we were entitled to an exoneration as a remedy in addition to the [extra] time." The People disagreed "that the court previously, on December 18, deferred the issue that is before this court today."

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<sup>2</sup> This motion to vacate was not supported by an additional declaration by Ramos as to any efforts to locate Vagramian since February 22, 2016.

The trial court noted that Allegheny “got all the time [it was] entitled to.” Allegheny’s counsel argued that “whether or not that’s the full remedy or whether or not the court was jurisdictionally required to exonerate the bond was still deferred, and that’s why it’s very clear that the court allowed a supplemental motion to seek exoneration.” The court indicated it understood the argument but “disagree[d] with it on the facts.” The court “read the transcript as saying that the court denied it on the merits and that such a motion had to be filed no later than February 22, 2016.” The People responded that “[w]hat the court was saying is if they had a new argument for seeking exoneration, the court would hear it; but if it was based on the same arguments that [were] presented at summary judgment, then the surety cannot be allowed to use the same arguments.”

The court read the transcript of the previous hearing as stating that Allegheny “would have 65 days to file a new motion to exonerate by February 22. They didn’t do that. They instead filed an extension motion.” For that reason, the court found the motion before it to be untimely. It added that, “even if the motion were timely, [it would] consider the merits of the argument anew, just in an abundance of caution.”

Addressing the merits, the court noted that Allegheny “does not point to any particular section of Penal Code sections 1305 or 1305.4 that divested the court of jurisdiction, but instead argues that the clerical error results in the [exoneration] as a matter of law.” The court disagreed with this argument and indicated it would deny Allegheny’s motion on its merits as well. It therefore ordered that summary judgment be entered.

Summary judgment was entered on January 25, 2017. Allegheny timely appealed.

## DISCUSSION

### I. Issue Presented and Standard of Review

Allegheny frames the issue before this court as a question of law: “Is the surety entitled to an exoneration of bail when the court mistakenly entered the bond as exonerated in the minutes, and provided the surety with a certificate of discharge reflecting that the bond had been exonerated, which the surety relied on, and the error was not corrected until after the appearance period under Penal Code section 1305 lapsed.” Based on this characterization of the issue, Allegheny asserts that our review is *de novo*, based on undisputed facts, focusing on “legal analysis or contract interpretation.” (See *People v. International Fidelity Ins. Co.* (2010) 185 Cal.App.4th 1391, 1395; *People v. American Bankers Ins. Co.* (1992) 4 Cal.App.4th 348, 350.)

The People counter that “the issue on appeal is whether [Allegheny] was and is now entitled to exonerate the bond due to a clerical error.” The People claim that Allegheny “fails to assert any statutory or contractual basis to exonerate the bond, and therefore, there is no issue of statutory construction or contract interpretation. Additionally, [Allegheny’s] argument on appeal relies on a causal premise that is not supported by the record (i.e., that the clerical error interfered with or hindered [Allegheny’s] performance of the bail contract), and therefore, the factual evidence is disputed. Consequently, the standard of review to be applied is abuse of discretion.” (See *People v. International Fidelity Ins. Co.*, *supra*, 185 Cal.App.4th at p. 1395; *County of Los Angeles v. Nobel Ins. Co.* (2000) 84 Cal.App.4th 939, 944-945.)

To the extent Allegheny claims that the clerical error was jurisdictional, requiring an interpretation of the applicable statutes, de novo review applies. We must determine whether, as a matter of law, the error deprived the trial court of jurisdiction to declare a forfeiture, thus entitling Allegheny to exoneration of the bail bond. (See *People v. American Bankers Ins. Co.*, *supra*, 4 Cal.App.4th at p. 350.)

To the extent we must determine whether the trial court erred denying the motion to vacate the forfeiture and exonerate bail based on its underlying factual determinations, e.g., whether Allegheny was prejudiced by the delay in attempting to locate Vagramian caused by the clerical error, we apply the abuse of discretion standard. We will not disturb the trial court's ruling on appeal " 'unless a patent abuse appears on the record. [Citations.]' [Citation.] ' "The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power." [Citations.]' [Citation.] [¶] A miscarriage of justice occurs when it appears that a result more favorable to the appealing party would have been reached in the absence of the alleged errors. [Citations.] The burden is on the appellant in every case to show that error has resulted in a miscarriage of justice. [Citation.]" (*County of Los Angeles v. Nobel Ins. Co.*, *supra*, 84 Cal.App.4th at pp. 944-945.)

## **II. The Trial Court's Finding that Allegheny's Motion Was Untimely**

Penal Code section 1305 (section 1305) governs the trial court's declaration of a forfeiture upon the defendant's unexcused failure to appear. Under subdivision (b) of section 1305, if the bond exceeds \$400, after the court declares a forfeiture, the clerk of the court must mail notice of the forfeiture to the surety and the bail agent within 30 days. (*Id.*, subd. (b)(1) & (2).) If the clerk fails to mail the notice of forfeiture as required, "[t]he surety or depositor shall be released of all obligations under the bond . . . ." (*Id.*, subd. (b)(3).)

Subdivision (c) of section 1305 provides for vacation of the forfeiture and exoneration of the bond. In essence, it provides that if the defendant appears voluntarily or is taken into custody within 180 days after the declaration of forfeiture, the court must vacate the forfeiture and declare the bond exonerated. If the court fails to do so, "then the surety's . . . obligations under the bond shall be immediately vacated and the bond exonerated." (*Id.*, subd. (c)(1).)

Penal Code section 1305.4 provides: "Notwithstanding Section 1305, the surety insurer, the bail agent, the surety, or the depositor may file a motion, based upon good cause, for an order extending the 180-day period provided in that section. The motion shall include a declaration or affidavit that states the reasons showing good cause to extend that period. The court, upon a hearing and a showing of good cause, may order the period extended to a time not exceeding 180 days from its order. . . ."

Penal Code section 1306 provides that if the forfeiture is not set aside within the time specified in section 1305, the court



shall enter summary judgment within 90 days. (*Id.*, subds. (a) & (c).) If it fails to do so, the right to enter summary judgment expires and bail is exonerated. (*Id.*, subd. (c).)

Allegheny's first argument is that, under these provisions, its motion to vacate the forfeiture and exonerate bail was timely; if it was untimely, the time to enter summary judgment expired prior to the hearing on the motion and therefore, the bond was exonerated by operation of law. If we assume *arguendo* that the motion was timely, then we turn to Allegheny's second argument: the trial court erred in denying Allegheny's motion because the clerical error in representing that the bond was exonerated interfered with Allegheny's performance of the bail contract; this excused Allegheny's performance, and the proper remedy was exoneration of the bond.

### **III. Interference with Performance of Contract**

Bail bond proceedings are civil in nature. (*People v. Safety National Casualty Corp.* (2016) 62 Cal.4th 703, 709.) "In that regard, the bail bond itself is a '“contract between the surety and the government whereby the surety acts as a guarantor of the defendant's appearance in court under the risk of forfeiture of the bond.”' [Citation.]" (*Ibid.*) The surety's performance under the contract may be excused, however, where its performance is prevented by the act of the other party to the contract, the government. (*People v. Meyers* (1932) 215 Cal. 115, 117.)

Here, Allegheny agreed to a remedy for the government's act—clerical error—which it claimed interfered with its ability to perform under the bail bond contract. It stipulated to a 64-day extension of the time it would have in which to surrender Vagramian. Allegheny thereafter requested and received a six-

month extension of time in which to surrender Vagramian. Having agreed to this remedy, Allegheny cannot now claim that the clerical error excused its performance of the bail bond contract. (Cf. *Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 596.)<sup>3</sup>

Allegheny also argues that, as a result of the clerical error, Nelly's Bail Bonds closed the file on this case and ceased its investigation into Vagramian's whereabouts, "thus hindering their ability to perform under the contract. By discontinuing the investigation, any leads into [Vagramian's] location grew cold, and the chances of catching [Vagramian] decreased dramatically. Because the effect of the clerk's error hindered the bail agent's

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<sup>3</sup> In *Alki Partners, LP v. DB Fund Services, LLC*, *supra*, 4 Cal.App.5th at page 596, the court held that the trial "court correctly determined Hedgeworks cannot breach its Agreement with Alki Partners by complying with Alki Partners' own directions. In analogous circumstances, the court in *Sutherland v. Barclays American/Mortgage Corp.* (1997) 53 Cal.App.4th 299[ 311-312] . . . stated: ' "We know of no principle of law . . . which will permit a party to a contract, who is entitled to demand the performance by the other party of some act within a specified time, and who has consented to the postponement of the performance to a time subsequent to that fixed by the contract, and where the other party has acted upon such consent, and in reliance thereon has permitted the contract time to pass without performance, to subsequently recall such consent and treat the non-performance within the original time as a breach of the contract." ' [Citation.]" (Fn. omitted.) The situation here is similar. Allegheny basically consented to postponement of the performance time and, when it was unable to perform, sought to withdraw that consent and claim its non-performance was excused.

performance under the contract, the proper remedy was exoneration of bail.” (See, e.g., *People v. Western Ins. Co.* (2013) 213 Cal.App.4th 316, 323-324 [court order permitting the defendant to travel to Philippines, made without surety’s knowledge or consent, materially increased surety’s risks under the bail bond agreement].)

Allegheny cites no evidence in the record to support this argument. In this regard, we note that Stepanyan did not check the status of Vagramian’s bond until four months after the trial court declared a forfeiture, and the clerk mailed notice of the forfeiture to Nelly’s Bail Bonds and Allegheny. Allegheny presented no evidence as to what steps, if any, it undertook to locate Vagramian during that time. For example, there was no evidence that any open leads existed as of March 18, 2015, or that there was an ongoing investigation at that time that was halted when Stepanyan was told, erroneously, that the bail bond had been exonerated.

In sum, Allegheny presented no evidence that its inability to locate Vagramian resulted from the delay caused by the clerical error, that is, Allegheny’s failure to look for Vagramian between March 18 and June 3, 2015, the time when it erroneously believed the bond had been exonerated.

Allegheny also suggests the delay caused by the clerical error was presumptively prejudicial. Under the facts of this case, and particularly the fact that Allegheny received notice of the forfeiture and had four months in which to locate Vagramian before being told, erroneously, that bail had been exonerated, we decline to find the delay presumptively prejudicial.

We perceive no abuse of discretion in the trial court’s denial of the motion to vacate the forfeiture. Allegheny has failed to

show that the trial court erred in its ruling or that, absent the error, Allegheny would have received a more favorable outcome. (*County of Los Angeles v. Nobel Ins. Co.*, *supra*, 84 Cal.App.4th at pp. 944-945.)

#### **IV. Jurisdictional Error**

Allegheny also contends the clerical error indicating that bail was exonerated, which was not corrected during the entire 180-day appearance period, was a jurisdictional error which could not be corrected nunc pro tunc. The case authorities on which Allegheny relies do not support this contention.

As we stated at page 7, *ante*, we apply de novo review to Allegheny's claim that the clerical error was jurisdictional, requiring an interpretation of the applicable statutes to undisputed facts. (See *People v. International Fidelity Ins. Co.*, *supra*, 185 Cal.App.4th at p. 1395; *People v. American Bankers Ins. Co.*, *supra*, 4 Cal.App.4th at p. 350.)

Allegheny's claim of jurisdictional error rests on the assumption that it is the entry of the court's order in the minutes which constitutes the order declaring a forfeiture. This claim is based on former section 1305, which provided "that '[i]f, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court is lawfully required . . . the court must direct the fact to be entered upon its minutes and the undertaking of bail . . . must thereupon be declared forfeited.' [The former section] further provide[d] that 'if at any time within 90 days after such entry in the minutes, the defendant and his bail appear, and satisfactorily excuse the defendant's neglect or show to the satisfaction of the court that the absence of the

defendant was not with the connivance of the bail, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.’” (*People v. Black* (1961) 55 Cal.2d 275, 276.) Thus, the former version of section 1305 “provide[d] for the making of a motion for relief from an order of forfeiture ‘at any time within 90 days after such entry’ upon the court’s minutes.” (*Black, supra*, at p. 277.)

Section 1305 has since been rewritten. The section now provides: “A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the” specified proceedings. (*Id.*, subd. (a)(1).) As explained in *People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, “The requirement that forfeiture be declared ‘in open court’ did not exist in the statute until it was revised in 1998. (Stats. 1998, ch. 223, § 2.)” (*Id.* at p. 710.) The legislative history of this amendment did “not support Allegheny’s assertion that by adding the declaration-in-open-court requirement, the Legislature also intended to impose a requirement that a reporter’s transcript, or at least the minutes, reflect that the declaration was made in open court. Indeed, this history suggests the opposite. It demonstrates that the Legislature wished to provide actual and immediate notice of bail forfeiture for the benefit of any surety or bail agent in attendance at the public court session, so that prompt efforts might be undertaken to locate the absent defendant.” (*Id.* at p. 712.) Thus, the court concluded, section 1305, subdivision (a) “demands only what it expressly requires—that the declaration be made in open court—and not that a reporter’s transcript, or the minutes, further reflect that the

declaration occurred in open court.” (*Allegheny Casualty Co.*, *supra*, at p. 714, fn. omitted.)

It is the declaration in open court which is the prerequisite to jurisdiction to declare a forfeiture. To the extent the entry in the minutes differs from the court’s declaration of forfeiture, the error is clerical, not jurisdictional, and it may be corrected at any time. (Cf. *People v. Wilshire Ins. Co.* (1977) 67 Cal.App.3d 521, 532-533.)

Allegheny relies on *People v. United Bonding Ins. Co.* (1971) 5 Cal.3d 898 (*United Bonding*) for the proposition that “delays in providing the bail agent with the status of the case on a bail bond result in the exoneration of bail.” *United Bonding* predated amendment of section 1305. It is factually inapposite as well. In *United Bonding*, the defendant failed to appear; the trial court issued a bench warrant but failed to order a forfeiture of his bail bond. (*United Bonding, supra*, 5 Cal.3d at p. 902.) Four months later, the court ordered bail forfeited and the court clerk gave the surety notice of forfeiture. The surety moved to set aside the forfeiture and exonerate the bail bond. (*Id.* at p. 903.) The trial court then issued a nunc pro tunc order correcting the language of the previous order. It subsequently denied the surety’s motion. (*Id.* at pp. 903-904.) The Supreme Court concluded “that the [trial] court’s failure to declare a forfeiture upon a nonappearance without sufficient excuse . . . deprives the court of jurisdiction to later declare a forfeiture.” (*Id.* at p. 907.) This conclusion was based on the claimed failure to comply with section 1305, not on the “delay[ ] in providing the bail agent with the status of the case on a bail bond,” as Allegheny claims.

Here, the trial court properly declared a forfeiture orally in open court, and promptly sent out notice of forfeiture upon

Vagramian's failure to appear, in compliance with section 1305. Allegheny relies exclusively on section 1305. It does not identify any other statute purportedly depriving the court of jurisdiction to declare a forfeiture. *United Bonding* held that a violation of specific provisions of section 1305 resulted in exoneration of bail; here, the trial court complied with the applicable provisions of section 1305.

Allegheny also cites a statement in *People v. Far West Ins. Co.* (2001) 93 Cal.App.4th 791, 796: "In several of the (surprisingly many) reported bail forfeiture cases, clerical and like errors by county employees in mail and other communications relating to bail and extradition were held sufficient to require vacatur of the forfeiture order. The results in these cases are grounded in principles of equity and a commonsense, practical construction of the bail forfeiture statute. [Citations.]" This broad statement notwithstanding, the decision in *Far West* was based on an interpretation of specific provisions in section 1305, having to do with the detention of a fugitive defendant in another state. (*Far West, supra*, at pp. 795-796; see § 1305, subds. (f) & (g).) These provisions have no application here and, as discussed above, the trial court complied with subdivisions (a) and (b) of section 1305 by declaring a forfeiture in open court and promptly mailing notice of forfeiture to Nelly's Bail Bonds and Allegheny.

As a matter of law, the clerical error in the minute order noting that bail had been exonerated was not a jurisdictional error; therefore, it did not require that the forfeiture be vacated and bail exonerated. Rather, as discussed above, the clerical error was subject to abuse of discretion analysis. The trial court did not abuse its discretion in refusing to vacate the forfeiture.

## **DISPOSITION**

The judgment is affirmed. The People to recover costs on appeal.

NOT TO BE PUBLISHED

JOHNSON, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.